

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SHAWN R. ERPELDING, Unlawfully
Imprisoned;

Petitioner,

vs.

SCOTT FRAKES, Director of Neb. Dept.
of Corr. Svcs.;

Respondent.

8:20CV167

MEMORANDUM AND ORDER

On December 7, 2020, the court received a document entitled “Motion for an extension of time to file an appeal” from Stacy Patterson, the sister of Petitioner Shawn R. Erpelding. Ms. Patterson represents that she is trying to assist Petitioner with seeking an extension of time to file his appeal from the Memorandum and Order and Judgment entered November 4, 2020, dismissing his habeas petition with prejudice. (Filings 23 & 24.) Ms. Patterson states Petitioner is “in a 24-hour restriction cell” without “any access to get this filed on his own.”

The court cannot accept the document submitted by Ms. Patterson for filing in this case as she is not a party to the action nor is she an attorney who may act on Petitioner’s behalf. The court will not act on the document and will direct the clerk’s office to return the letter to Ms. Patterson along with a copy of this order.

Petitioner is advised that Rule 4 of the Federal Rules of Appellate Procedure requires a party to file a notice of appeal within 30 days after the challenged judgment is entered. Fed. R. App. P. 4(a)(1). Rule 4(a)(5) allows a party to move the district court to extend the time to file a notice of appeal if “(a) he moves no more than thirty days after the original thirty day deadline has passed, and (b) he shows good cause.” *Pugh v. Minnesota*, 380 Fed. Appx. 558, 559 (8th Cir. 2010).

Thus, if Petitioner seeks additional time to file a notice of appeal, then he must file a motion for an extension by **January 4, 2021**. Petitioner should also be aware that simply filing a notice of appeal before January 4, 2021 will not suffice as Federal Rule of Appellate Procedure 4 specifically requires a separate motion requesting an extension of time to file a notice of appeal. *See Campbell v. White*, 721 F.2d 644, 645–46 (8th Cir. 1983) (“[N]otice of appeal received after the date for filing notices may not be considered a motion for extension.”).

IT IS THEREFORE ORDERED that:

1. The court will take no action on the document submitted to the clerk’s office by Petitioner’s sister on his behalf.
2. The clerk’s office is directed to return the document submitted by Stacy Patterson to her along with a copy of this Memorandum and Order at the address found on the envelope used to mail the document or within the document itself.
3. Petitioner is advised that he has until **January 4, 2021** to file a motion of extension of time to file his notice of appeal.

Dated this 7th day of December, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge